
(1954) 03 CAL CK 0008
In the Calcutta High Court
Case No : Suit No. 3003 of 1949

Srinath Das

APPELLANT

Vs

Devi Shaw

RESPONDENT

Date of Decision : 23-03-1954

Acts Referred:

Calcutta Municipal Act, 1923 — Section 392(1), 394, 394(1), 401, 403(1)
Cess Act, 1880 — Section 4
Contract Act, 1872 — Section 65, 70
Railways Act, 1989 — Section 1(3)

Citation : (1956) 2 ILR (Cal) 1

Hon'ble Judges : G.K. Mittar, J

Bench : Single Bench

Advocate : A.K. Sen and S. Roy, for the Appellant; Subimal Roy and S.C. Deb for Defendant No. 1 and R.N. Mitra, for Defendant No. 2, for the Respondent

Final Decision : Dismissed

Judgement

G.K. Mitter, J.—One Srinath Das was the owner of two businesses in sweetmeat at stalls Nos. 10 and 12, G-Block, Lansdowne Market, Calcutta, and at 140/A Russa Road, Calcutta, outside the jurisdiction of this Court. Some years ago the Corporation of Calcutta, one of the Defendants in this suit, allotted the two aforesaid stalls at Lansdowne Market to the said Srinath Das, who also held for several years a licence in respect of the said businesses under the Calcutta Municipal Act. The Defendant Devi Shaw used to be employed by the said Srinath Das in his business at Lansdowne Market.

2. Srinath Das, who originally filed the suit, is dead, and his heirs and legal representatives have been brought on the record as Plaintiffs in this suit after his death. The case of the Plaintiffs is that Srinath Das was away at his native place at Mathura in or about June, 1948 and on coming back to Calcutta in September, 1948 he was refused access to the shop at Lansdowne Market by the Defendant Devi Shaw. The Plaintiffs allege that licence of the deceased Srinath Das had been revoked and cancelled by the Chief Executive Officer, Corporation of

Calcutta, on the pretended ground of Srinath Das having sublet the said stalls in Lansdowne Market and thereby contravened the terms and conditions of the licence granted to him. The Plaintiffs further complain of certain orders passed by the Corporation of Calcutta on September 8, 1948, December 20, 1948, January 8, 1949 and March 25, 1949. These orders relate far the revocation or cancellation of the licence of Srinath Das in respect of the stalls at Lansdowne Market and the allotment of the said stalls to the Defendant Devi Shaw. These orders, according to the, Plaintiffs, were passed by the Defendant Corporation of Calcutta at its principal office within the jurisdiction of this Court. The Plaintiffs also contend that the deceased Srinath Das had never agreed, to transfer the stalls at Lansdowne Market or any portion thereof to the Defendant Devi Shaw and that the deed of agreement, dated September 15, 1945, set up by the Defendant Devi Shaw as affecting to transfer the aforesaid stalls at the Lansdowne Market, is not binding on the Plaintiffs and should be adjudged void, and delivered up for cancellation. According to the Plaintiffs all the said orders of the Corporation of Calcutta mentioned above were made mala fide and in collusion and conspiracy with the Defendant Devi Shaw. The Plaintiffs charge that the Defendant Devi Shaw unlawfully and in breach of faith and confidence reposed in him by the deceased Srinath Das completely ousted the said Srinath Das and usurped all books, papers, accounts, vouchers of the said Srinath Das in respect of the aforesaid stalls at Lansdowne Market and thereby deprived him of all documents of title. The Plaintiffs submit that they are still the owners of the business at the aforesaid stalls and as the Defendants are denying and/or are interested to deny their right, title and interest in the said business they are entitled to a declaration from this Court upholding their rights in respect thereof. They also claim to be the owners of the licence in respect of the aforesaid stalls. The Plaintiffs further state that they have suffered loss and damages by reason of nsurption by the Defendant Devi Shaw of the business of Srinath Das at Lansdowne Market and by reason of the pretended cancellation and the revocation of the licence granted to the deceased Srinath Das. They also claim damages to the extent of Rs. 20,000 being the value of the stock-in-trade and assets of the business alleged to have been wrongfully converted by the Defendant Devi Shaw. By the plaint as originally filed Plaintiffs asked for a decree for (a) a declaration that the the Plaintiffs were the owners of the business stalls Nos. 10 and 12, G-Block, Lansdowne Market, Calcutta, (b) a declaration that the Plaintiffs were entitled to be the licensee in respect of the aforesaid stalls and that the pretended cancellation and revocation of the licence granted to Srinath Das were unlawful, (c) a declaration that the pretended agreement, dated September 15. 1945, was void and delivery up of the alleged agreement for cancellation, (d) loss and damages and loss of profits assessed at Rs. 200 per month or alternatively accounts of the said business and enquiry thereinto and payment of the sum found due, (e) stock-in-trade of the assets of the said business valued at Rs. 20,000 and other reliefs. The suit was filed on August 8, 1949. After the death of Srinath Das on January 2, 1953, the plaint was amended by the addition of a new paragraph 21 and other amendments

necessitated by the death of the said Srinath Das, both in the body of the plaint and in the Cause Title and in the reliefs asked for.

3. Thereafter, there was a further amendment. By this paragraph 9 of the plaint was further altered by the addition of the following:

The Defendant Devi Shaw has, further, by misusing his fiduciary position, wrongfully procured from the Defendant Corporation of Calcutta licences for the said stalls in his own name. The Defendant Devi Shaw is liable to hold the said licences and the said stalls in trust for the Plaintiff.

4. The prayer portion was also amended by the addition of a new prayer (b)(i) which reads as follows:

A declaration, if necessary, that the Defendant Devi Shaw is holding the said stalls and the licences in respect thereof in trust for the Plaintiff.

5. The Defendants Devi Shaw and the Corporation of Calcutta have filed separate written statements. The Defendant Shaw denies that Srinath Das, was the owner of the two businesses or either of them, his contention being that he was the absolute owner of the businesses from 1943. He also denies that he was a servant of the Plaintiff Srinath Das as untruly alleged in the plaint. The case made by Devi Shaw in his written statement is that the deceased Srinath Das had sublet the said stalls to him in or about 1943, and that he had been carrying on the confectionery businesses at the stalls in Lansdowne Market ever since that time. He states further that he was called upon by the Defendant Corporation of Calcutta to vacate the stalls and upon his application for allotment of the same to him the stalls were so allotted by the Corporation of Calcutta on payment of Rs. 3,000 as initial rent. In paragraph 8 of his written statement Devi Shaw makes a positive case that in or about 1943, Srinath Das sublet or leased the said two stalls to him on certain terms and conditions, viz., (1) that the Defendant Devi Shaw would pay the daily rent of the said two stalls payable under the licence to the Corporation of Calcutta, (2) that the Plaintiff Srinath Das would continue to apply for renewal of the said licence from the Corporation of Calcutta, (3) that the Defendant Shaw would pay to the Plaintiff Rs. 3 per day as rent of the said two stalls. With regard to the agreement for the transfer of the two stalls in 1945 the Defendant Devi Shaw's case is that the agreement was validly entered into and is binding on the Plaintiff Srinath, Das and that thereby the rent payable was increased to Rs. 4 per day. The confectionery business, according to Devi Shaw, belongs entirely to him and was started with his money and that the Plaintiffs have no interest therein. Devi Shaw also denies the Plaintiffs' right to claim any damages or the value of the stock-in-trade. Among other defences taken by him Devi Shaw contends that this Court has no jurisdiction to try this suit. The Defendant Corporation of Calcutta, by its written statement, contends that the orders contained in the plaint were all validly and legally made, that there was no collusion between the Corporation of Calcutta and the Defendant Shaw, that the Plaintiff Srinath Das was called upon to produce his account books for various

years and to show cause why his licence should not be cancelled, that the said Plaintiff did not avail himself of the said opportunities whereupon the licence granted to him was cancelled. The Corporation also states that the Chief Executive Officer, on due consideration, duly re-allotted the stall to the Defendant Devi Shaw upon payment of Rs. 3,000 as initial rent and Rs. 4 as daily rent from September 9, 1948. The Corporation raises various technical defences, my that the suit was barred by limitation, that it was not maintainable against the Corporation of Calcutta under the provisions of the Calcutta Municipal Act, 1923, etc.

6. The Corporation states further that the stalls Nos. 10 and 12 of Block G of the Lansdowne Market were allotted to the Plaintiff several years ago on a permanent basis for carrying on business in the sale of sweetmeat subject to the terms and conditions of a. licence granted to him by the Corporation u/s 394 of the Calcutta Municipal Act and that such licence was renewable from year to year. In or about November, 1947 the Superintendent of the said Market found that the said stalls were in the actual occupation of the Defendant No. 1 and the Plaintiff was thereupon required to show cause why his licence should not be cancelled, for subletting the said stalls without the permission of the Coloration. The Plaintiff neither appeared before the Superintendent nor did he show cause pursuant to the notice but the Defendant Devi Shaw sent in a reply stating that he was a servant of the Plaintiff managing the said stalls on behalf of the Plaintiff. In the absence of convincing proof of subletting the Plaintiff Srinath Das's licence was renewed in April, 1948. Thereafter further enquiry was instituted in August, 1948. The Plaintiff did not appear nor did he show cause. The Defendant Devi Shaw appeared and submitted that the stalls had been sublet to him. After full consideration of the matter the Plaintiff's licence in respect of the stalls was cancelled by an order, dated September 9, 1948, which order was duly communicated to the Plaintiff. The Plaintiff Srinath Das was further called upon to establish to the satisfaction of the First Deputy Executive Officer of the Corporation of Calcutta that he was still in occupation of the said stall and the owner of the business carried on in the Lansdowne Market, and on the Plaintiff's failure to do so the matter was referred to the Chief Executive Officer of the Corporation of Calcutta for final orders. The Chief Executive Officer directed that if the Plaintiff did not satisfy the First Deputy Executive Officer by January 4, 1949, the order for cancellation of the Plaintiff's licence would be given effect to and the stalls be reallocated. The Plaintiff Srinath Das failed and neglected to satisfy the Deputy Executive Officer on the points mentioned and the order for cancellation of his licence was thereupon confirmed. Subsequent thereto, on the Defendant Devi Shaw's application for allotment of the said stalls the Chief Executive Officer related the stalls to him by an order dated March 25, 1949. Various documents have been disclosed by the parties in this case but no agreed brief of documents were put in and the following issues were settled at the hearing of the suit:

(1) Did Srinath Das sublet the stall to Devi Shaw?

- (2) Is the Plaintiff the owner of the business carried on in the stalls in suit?
- (3) Was the Defendant Devi Shaw a servant of the Plaintiff ?
- (4) Did Devi Shaw wrongfully procure the licence in his own name as alleged in paragraph 9 of the plaint
- (5) Are the orders mentioned in para. 10 of the plaint unlawful as alleged therein? Is the Plaintiff bound by the said orders?
- (6) Has this Court jurisdiction to try this suit?
- (7) Is this suit barred by limitation?
- (8) To what relief, if any, is the Plaintiff entitled?
- (9) Is the suit maintainable with regard to prayer (b)(i) in view of the fact that no leave was obtained under Clause 12 at the time of the amendment?

7. Counsel for the Plaintiff Mr. Sen suggested that I should give my decision on the question of jurisdiction first, and this course was also acceptable to counsel for the other parties. Counsel for the Defendant Devi Shaw contended that the suit was not maintainable with regard to prayer (b)(i) in view of the fact that no leave had been obtained under Clause 12 of the Letters Patent at the time of the second amendment of the plaint making additions to paragraph 9 of the plaint and inserting the new prayer (b)(i) already mentioned and counsel relied on the decision of Sinha, J. in the case of Kshitish Kumar Shome v. The State of Bihar (1953) 91 C.L.J. 279. This case is an authority for the proposition that an amendment which necessitates the granting of fresh leave under Clause 12 of the Letters Patent should not be allowed inasmuch as such leave can only be granted at the time of the institution of the suit. The learned Judge, of course, visualised a case where such leave could be granted, viz., the case where a new party is sought to be brought in by reason of the amendment. But the judgment really does not, consider the question as to what would be the effect if amendment has already been allowed and no exception taken thereto at the time when the application for amendment was made. This point is, however, covered by the decision of Gentle, J, in the case of Barasat Basirhat Light Railway Company v. The District Board of 24-Pargands AIR (1946) Cal. 23, a judgment which is referred to in the case of Kshitish Kumar Shome v. The State of Bihar (supra). In this case the railway company filed a suit against the District Board of 24-Parganas claiming certain moneys due under an agreement. After the institution of the suit and as a matter of fact during the progress of the hearing thereof, it was discovered that the agreement was not binding on the District Board by reason of the absence of certain formalities. An application was then made for amendment of the plaint by the addition of claims u/s 65 and Section 70 of the Indian Contract Act. The learned Judge allowed the application and gave the Defendant an opportunity to file an additional written statement. It appears from the judgment of Gentle, J. (at p. 33) that

After the conclusion of all arguments referable to the several claims and the matters arising out of and in connection therewith, objection was taken on behalf of the Board to the jurisdiction of the Court in respect of the claims made in amendment in the plaint. At the time when the question of amendment arose and when leave was given on the 17th November, 1943, for the amendment to be made, the question of jurisdiction was not raised ; this took place on the 24th November.

8. The learned Judge held:

Jurisdiction which the court does not possess cannot be conferred by a party postponing to take the objection and unless there is jurisdiction in the Court, it has none to exercise.

9. The learned Judge went on to observe:

Jurisdiction is conferred to receive, try, and determine suits provided the leave of the Court is previously obtained when the cause of action arises in part within the territorial limits. Leave must be obtained before the suit can be received. In *Rdmpurtab Samruthroy v. Premsukh Chandamal* ILR (1890) Bom. 93, it was held that the grant of leave is a judicial act relating solely to the cause of action set forth in the plaint at the time it was obtained," it affords the very foundation for jurisdiction and it is not available to confer jurisdiction in respect of a different cause of action which was not considered at the time, and subsequently the plaint cannot be amended so as to alter the cause of action, the Court cannot try a different cause of action save in another suit In *Motilal Tribhovandas Choksey Vs. Shankarlal Chhaganlal*, , it was held that when a suit was instituted with leave under Clause 12 by several persons as partners and by amendment of the plaint was converted into a suit by only one of them, the cause of action is altered and does not lie in the absence of fresh leave.

10. The learned Judge observed further:

My attention was not called to the authorities and the question of leave being required in respect of the amendment was not raised when I granted leave to amend the plaint. But this omission and the grant of leave to amend the plaint cannot confer upon the Court jurisdiction which it does not possess.

11. Mr. Sen, arguing on behalf of the Plaintiff, contended that such a proposition would work great hardship on the Plaintiff because he would thereby be deprived of amending his plaint under the provisions of the Code of Civil Procedure. I agree that hardship may be caused to the Plaintiff in these circumstances but I see no reason why I should differ from the judgment of Gentle, J. which I have quoted as also from the judgment of Kania, J. of the Bombay High Court in *Motilal Tribhuvandas v. Shankerlal Chhaganlal* (supra). Without leave under Clause 12 of the Letters Patent such a suit could not be entertained at all by this Court, and a person, who seeks to take the advantage of this provision of law, should not be heard to complain, if through his own default, he omitted to

include a cause of action which was available to him at the time of the institution of the suit. Neither is there any substance in Mr. Sen's contention that once leave is given the Court has "received the suit" and has "to try and determine" the same although by amendment the suit may have suffered a laic change. Once the cause of action is altered or added to, it cannot, in my opinion, be said that the reception of the suit continues to be proper without the grant of fresh leave.

12. The original Plaintiff Srinath Das claimed to be the allotted of two stalls in Lansdowne Market. It cannot be doubted that these stalls by themselves are immovable, properties. The terms of allotment are not to be found in any document which has been disclosed but it is asserted by the parties that a considerable amount of money had to be paid for such allotment. The licence which was granted to Devi Shaw in the year 1949 has been marked as an exhibit in this case and it was agreed that the terms of the previous licences were the same. This licence was granted u/s 394(1) of Bengal Act III of 1923. It reads as follows:

The Corporation of Calcutta hereby grants unto Devi Prosad Shaw this licence on payment of DAILY Bent u/s 401 of the Calcutta Municipal Act, at the rate of Rs. 4 per day during the month of January, 1950 for occupying stalls Nos. 10 and 12, Block No. G and for selling or exposing for sale sweetmeats subject to the conditions in force in respect of Municipal Markets, and those specifically mentioned on the back.

This licence shall be deemed to be a licence for the days for which the daily rent is paid in advance as per receipt thereunder.

13. Various terms and conditions are to be found printed on the reverse of this licence. The important terms being:

(1) That no change in the nature of business will be made by the stall-holder without written sanction being first obtained from the Corporation in that behalf.

(2) That no stall-holder shall sublet the use of the stall or any portion thereof or transfer his title, interest or any portion of interest in the business conducted in the stall, or admit or discharge any party in business without special sanction being first obtained from the Corporation in that behalf.

(3) That the daily rent for the stall shall be paid daily in advance before 10 a.m. every day.

(4) That the licensee shall pay in addition to the daily rent the amount due for electric charges (additional rent) for the month within the month.

(5) That the stall-holder shall be bound to quit and make over peaceful possession of the stall within 7 days from the service of a written notice to that effect by the Corporation.

(6) That the stall-holder shall be bound to comply with the directions and orders

of the Corporation as may be given from, time to time, and with the provisions of the Municipal Act and the Rules and Regulations and Bye-Laws made thereunder which are now in force or may hereafter come into force in respect of Municipal Markets.

14. The relevant provisions governing the issue of licence under the Calcutta Municipal Act in respect of markets are to be found in Chapter XXVII of the Calcutta Municipal Act of 1923. The material provisions are as follows:

Section 392(1)(b).-The Corporation may from time to time build and maintain such municipal markets, municipal slaughter houses and municipal stock yards and such stalls, shops, sheds, etc., for the use of persons carrying on trade or business, in or frequenting), such markets, slaughter houses or stock-yards, and provide and maintain in such municipal markets such buildings, places, machines and correct weights, scales and measures for weighing and measuring goods sold therein, as they may think fit.

Section 394(1).-No person shall, without a licence from the Corporation sell or expose for sale any animal or article in any municipal market:

Provided that no fee shall be charged for such licence.

Section 401.-The Corporation may-

(a) charge such stallages, rents and fees-

(i) for the occupation or use of any stall, shop, standing-shed or pen in a municipal market, municipal slaughter house or municipal stock-yard,

(ii) for right to expose goods for sale in a municipal market.

Section 403(1).-The Corporation, after giving the parties concerned an opportunity of being heard may,

(c) determine any lease or tenure which such person may have in any such stall, shop, standing-shed, pen or place.

15. These sections show that the Corporation may lease out or create a tenure inter alia in stalls in the municipal markets and charge rents for the occupation or use of any such stalls as also for the rights to expose goods for sale. The terms of the licence which I have set out above shows that rent was being charged by the Corporation of Calcutta for the occupation of the stalls and for selling or exposing for sale sweetmeats in the said stalls, the consolidated amount being fixed at Rs. 4 per day. The Plaintiffs' complaint in this suit is not only that Srinath Das was the grantee of a licence for a confectioner's business and that Devi Shaw was his agent for purpose of carrying on his business but that he was the allottee of two stalls wherein the business was being carried on. The Plaintiffs complain not only of the revocation or cancellation of the licence issued to Srinath Das but also about the allotment of the stalls to Devi Shaw. They further complain that no transfer was effected at any time by Srinath Das to Devi Shaw

of the stalls or any interest therein and that Devi Shaw had wrongfully usurped books and documents of the business and ousted the former Plaintiff Srinath Das, that the orders of the Corporation are inoperative and not binding either on Srinath Das and on his heirs and legal representatives. Although the Plaintiffs did not ask for any declaration of their title to the stalls directly they asked for a declaration that the agreement set up by the Defendant Devi Shaw purporting to transfer the stalls should be declared void and should be delivered up for cancellation.

16. Mr. Sen, appearing on behalf of the Plaintiffs contended that neither the Plaintiffs nor Devi Shaw acquired any interest in any immoveable property and that by the licence they were only granted privileges for carrying on business in the stalls mentioned in the plaint, that they could not be said to be in exclusive occupation or possession of the stalls, that their user of the stalls was limited in that they could only occupy the stalls for certain hours in the day and in a manner consistent with the Calcutta Municipal Act and the bye-laws promulgated thereunder. He contended further that the position of the Plaintiffs or the Defendant Devi Shaw was merely that of a licensee with no interest in the immovable property. On the other hand, it was contended on behalf of the Defendant Devi Shaw that although there might be restrictions as to the mode of user of these stalls the Defendant Devi Shaw certainly had an interest in these stalls and that he was not a mere licensee. Reference was made to a passage in Mulla's Transfer of Property Act to the effect that a distinction between a lease and a licence showed that the licensee had to give up possession immediately when called upon to do so and was not entitled to any notice and that the licensee had no right to exclusive possession of the premises occupied by him. Mr. Sen, on behalf of the Plaintiff, referred me to the various sections of the Calcutta Municipal Act which I have dealt with and contended that the licence in this case could not be said to amount to an interest in land-at best, it merely amounted to a permission to expose goods for sale. He referred me to a judgment in support of his contention, the case being that of *The Secretary of State for India v. Karuna Kanta Choudhury* ILR (1907) Cal. 82. In this case a mela or fair was held yearly on lands included in the holdings of agricultural tenants, at a time when they were not used for agricultural purposes, by certain persons, called fakirs, who executed in favour of the zemindar a kabvliat agreeing to pay an annual "sayari chandina" "jama" for the right to hold the fair. The fakirs gave the right to hold the fair to ijarddars who derived profits by levying tolls on sellers of cattle and other animals, at a certain rate per animal, from stall-keepers at so much per stall and from certain other persons frequenting the fair.

17. It was held:

that the profits were not paid by tenant to landlord, nor for the use and occupation of land, and, consequently, were not rent, and did not fall within the definition of "annual value of land" in Section 4 of the Cess Act, and that an

assessment of case made by the Collector on the basis of such profits was illegal and ultra vires.

18. Mookerjee, J. observed in this case:

The question, however, which requires examination in this case is, whether the profits of a mela which have been assessed by the Collector, do fall within the description of "annual value of land". The question would require an answer in the affirmative, if it is established that the profits constitute rent, either actually payable, or assessed as reasonably payable, by the tenants. The question would however, require an answer in the negative if the profits are not payable by either cultivating raiyats or by other persons in the actual use or occupation of the land. The decisive test, therefore, which has to be applied is, whether the profits of the mela are rent payable by tenants to their landlord.....so far as the materials on the record go, they appear to indicate that these persons from whom money is collected are licensees and not lessees..... The most substantial contribution is made by persons who sell cattle, and the return filed by the ijaradars of the fakirs shows that a toll is, under the name of rent, levied at the rate of 5 annas for each head of cattle sold..... The question, therefore, narrows down to this: Are the persons, who, attend the fair with a view to sell various articles of merchandise and who either occupy or set up stalls or booths, in any sense tenants, and can the sums paid by them to the ijaradars of the fakirs be described as rent by any stretch of language? In my opinion, this question ought clearly to be answered in the negative..... The lands on which the fair was held during 20 days in-the year, were all comprised in the holdings of agricultural tenants. The legal possession was in them. The fakirs could not acquire by any grant from the landlord an interest in the lands in supersession or limitation of, or derogatory to, the interest of the cultivators. The zemindar granted them a right to hold the fair. This right they could not exercise, if the agricultural tenants objected. Substantially, they did not and could not acquire any right to the possession of the land. They could hold the fair only by consent or acquiescence of the cultivators. It is, therefore, impossible to say that they acquired any interest in the lands, Much less can it be said that the persons who attended the fair and sold animals, goods or articles or merchandise, were in any sense tenants of the ijaradars. They had obviously no interest in the land. They occupied or erected stalls or booths to store their goods and to sell them and paid what was nothing more or less than a toll to the ijaradars of the fakirs.

19. The position of Srinath Das or Devi Shaw in this case cannot be compared to the fakirs or ijaradars in the case just now quoted from. The stall-holder has to pay a considerable amount of money before he can be allotted this stall. The terms of the license itself show that he has to be given 7 days" notice before he can be called upon to quit or vacate the stall. So long as the stall-holder complies with the conditions laid down by the Calcutta Municipal Act, in my opinion, he is in exclusive possession of the stall; for any trespass committed on the stall he could certainly bring an action against the trespasser. It may be that the stall-

holder can only use the stall for certain hours of the day or night and that he has to lock up the stall at night and is not allowed to sleep there. But even then it could not be said that he was not in exclusive possession of the stall- a fact which would give rise to an inference that he was not a mere licensee. In *Glenwood Lumber Company v. Phillips* (1904) A.C. 405, delivering judgments of the Judicial Committee Lord Davey observed at p. 408:

If the effect of the instrument is to give the holder an exclusive right of occupation of the land, though subject to certain reservations or to a restriction of the purposes for which it may be used, it is in law a demise of the land itself.

20. The nature of the right acquired by stall-holders and others came up for discussion in the case of *Mayor, Aldermen and Councillors of the City of Westminster v. The Southern Railway Company and, Ors.* (1936) A.C. 511. There the question was whether certain premises at Victoria Station were railway here deterrents within the City of Westminster occupied for the purposes of the undertaking of the Southern Railway Company within the meaning of Section 1, Sub-section (3), of the Railways Act, 1930. The Station Yard at Victoria Station belonging to the Southern Railway Company, was not enclosed within gates, but was at all times open to the public. Access to the main station was obtained by gates in Wilton Road, Hudson's Place and Buckingham Palace Road, as well as by the gates opening on the Station Yard. Those gates were closed by the Southern Railway Company's servants at 12.45 a.m. every night and reopened by them at 4.30 a.m. for a short while and then closed again until 6 a.m. All the premises which were the subject-matter of the appeals were within the main station, and, where the gates were closed, no one could get access to them but by the leave of the Company. The shops and kiosks within the station opened at about 8 a.m. and closed at about 10 p.m. The structures and premises which were contained in the railway station and formed the subject-matter of the appeals, could be divided roughly into 3 groups:

(1) Premises of a permanent character not forming part of the building which was used by the Railway Company for its own purposes. Examples of this were a branch of the National Provincial Bank, and shops belonging to Messrs. Boots and others, and a tobacco stall.

(2) Bookstalls and kiosks or small shops apparently resting on the floor of station by their own weight but connected by pipes and electrical connections provided by the Company with parts of the station.

(3) Show-cases containing goods exposed for the purpose of advertisement.

21. Each of the premises was the subject of an agreement in writing between the Company and another party, called in some cases a tenant and in others a licensee. In all of these agreements certain rights were reserved to the Company. These could be divided into two main groups (1) agreements in the form of demises, (2) agreements in the form of licences.

22. It was contended in the case of the bank's premises that they did not have the rights to exclusive occupation or possession and that, therefore, they would be separately rated. Other features, affecting the bank's occupancy upon which some reliance was placed were (1) that the Railway Company may decide upon the line of approach to be used by the bank and their employees in going to the premises; (2) that the Railway Company reserve certain rights for the purpose of controlling pipes and cables which run through, under or over the premises, and (3) that the bank must observe the bylaws and regulations as to the management of the station and the requirements of the station-master for the management of the station business and traffic. Lord Russell in delivering judgment on behalf of himself as also of the Master of the Rolls, stated that he could find nothing in these provisions inconsistent with the bank having and enjoying the exclusive occupation and possession of the bank premises for the purposes for which they were occupied, namely, for the purposes of a bank. In the opinion of Lord Russell the occupation of W.H. Smith and Son of the sites of their bookstalls was no different from the occupation of the site of the bank premises by the National Provincial Bank Ltd., it was just as exclusive, just as paramount for rating purposes, just as permanent, and therefore just as rateable. This conclusion was arrived at even on the face of the contention that the bookstall employees, while on the railway premises, had to be under the control of the General Manager and the station-master, that bye-laws had to be observed, that bookstall servants were not to obstruct the railway Company's servants, that no employee was to be retained contrary to the decisions of the General Manager of the railway and finally the railway Company might exercise some control over what was sold at the bookstalls. In my opinion, even though the user of the stall may be subject to all the restrictions, enumerated by Mr. Sen, a stall-holder was still in exclusive possession or occupation of the stall and could not be said to be a mere licensee of the stall without any interest in the stall itself. The Plaintiff himself asked for a declaration that he was not bound by a certain agreement to sublet the stall to Devi Shaw. Whether or not this agreement was genuine, any decision on this question would naturally amount, in my opinion, to the adjudication of some title to the stall which must be held to partake of the nature of immoveable property. I was referred to the judgment of the Federal Court reported in *Messrs. Moolji Jaitha and Company v. The Khandesh Spinning and Weaving Mills* (1950) F.C.R. 849. The learned Judges did not come to the same conclusion in this particular case. But there seems to be no doubt that in the light of the tests mentioned by the learned Judges this suit would be a suit for land. Kania, C.J. observes at p. 865 of the Report:

It is sufficient to say that taking the suits as a whole one has to consider whether it is for the purpose of obtaining a direction for possession or a decision on title to land, or the object of the suit is something different but involves the consideration of the question of title to land indirectly.

23. According to Patanjali Sastri, J.'s observation to be found at p. 885:

Suits for land would obviously cover claims for recovery of possession or control of land and would connote also suits which primarily and substantially seek an adjudication upon title to immoveable property or a determination of any right or interest therein.

24. The suit in the present case is not one which relates merely to the ownership of the licence but also includes an adjudication as to the rights of the parties to the stalls situated in Lansdowne Market outside the jurisdiction of this Court. According to the Plaintiffs they were the allottees of the stall and although they do not directly ask for a declaration of title to this stall yet they contend that the allotment of the stall to Devi Shaw was wrongful and that they are not bound by the agreement of transfer of the stall to Devi Shaw. Clearly this would involve an adjudication of title to the stall itself.

25. Mr. Sen wanted to get round this difficulty by contending that his clients had asked for a declaration that the Defendant Devi Shaw had misused his fiduciary position and wrongfully procured from the Defendant Corporation, licences for the said stall in his own name and should, therefore, be declared to hold the said licences and the stalls in trust for the Plaintiffs. Mr. Sen relied also on the observations of Kania, C.J. and Patanjali Sastri, J. in support of his contention that if the main object of the suit was to bring an earring agent to book and get the help of the Court to recompense the Plaintiff for the loss and damage caused by the agent, then no matter that the adjudication of title to some land was involved, the suit could not be said to be a suit for land, and he contended further that even if the agent was not residing or carrying on business within the jurisdiction of this Court such a prayer could be granted. In view, however, of my conclusion that the plaint has not been properly amended and that I cannot grant him the prayer mentioned in (b)(i) of the prayer portion, and that I cannot uphold the amendment of paragraph 9 of the plaint, I do not think it necessary to go into that question.

26. In my opinion, the suit is a suit for land and as such this Court has no jurisdiction to entertain it. I, therefore, dismiss the suit, with costs.

27. Certified for two counsel.